

REMARKS

Status of the Claims

The present Office Action addresses and rejects claims 14-29. Applicants respectfully request reconsideration in view of the remarks herein.

Claim Rejections Pursuant to 35 U.S.C. § 102(e)

The Examiner continues to reject claims 14-29 pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2005/0085813 of Spitzer et al. ("Spitzer"), arguing that Spitzer discloses the claimed invention. Applicants respectfully disagree.

Claims 14-26

Independent claim 14 recites a method for implanting a spinal fixation element into at least one spinal anchor disposed within a vertebra in a patient's spinal column. The method includes introducing a spinal fixation element having a feature formed adjacent to a terminal end thereof through a lumen in an access device coupled to a spinal anchor. The access device includes a slot formed in a sidewall adjacent to a distal end thereof and adapted to prevent the feature from passing through any portion thereof. The method also includes manipulating the spinal fixation element to cause the feature to sit within a receiving member of the spinal anchor coupled to the access device, and to cause a remaining portion of the spinal fixation element to extend through the slot.

Spitzer does not disclose an access device including a slot formed in a sidewall adjacent to a distal end thereof and *adapted to prevent the feature from passing through any portion thereof*. The Examiner appears to be impermissibly ignoring the "any portion thereof" claim language. The Examiner states on page 2 of the Office Action that Spitzer discloses "a spinal fixation element (90) having a feature that is considered bulbous (91) through a lumen (see fig. 2E) that is coupled to a spinal anchor (61), and wherein the access device has a slot in the sidewall configured to prevent the feature from passing through of the fixation element [sic] (see fig 8A)." The Examiner continues on page 3 of the Office Action with the statement that "the device has a slot which is capable of preventing the passing of the feature." This is clearly incorrect.

The only slot in the cannula (42) that could possibly be the claimed slot is the slot (403) with the opening (402) because it is the only slot formed in a sidewall adjacent to a distal end of the cannula (42) through which the brace (90) extends, as shown in Figure 8A, reproduced below.

FIG. 8A

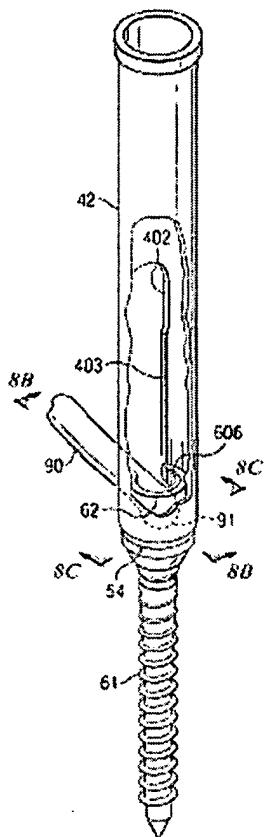
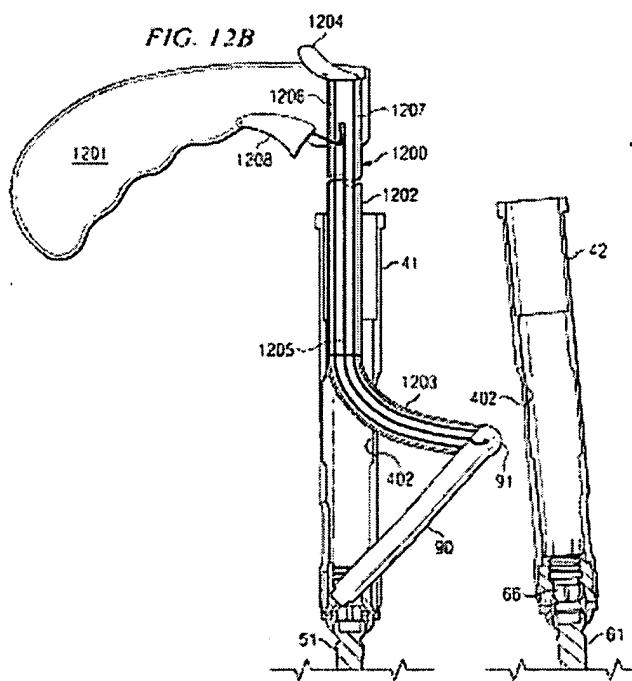


FIG. 12B



However, the slot (403) with the opening (402) does not fully satisfy the requirements of claim 14. Rather than the slot (403) with the opening (402) being adapted to prevent the end (91) from passing through *any portion thereof*, the opening (402) is *purposely adapted* to do the *exact opposite*. As clearly shown in Figure 12B, reproduced above, the end (91) exits the first cannula (41) through the opening (402) in the first cannula (41) and enters the second cannula (42) through the opening (402) in the second cannula (42). The opening (402), which is necessarily part of the slot (403) in the second cannula (42), in absolutely no way is adapted to prevent passage of the brace end (91).

In particular response to the Examiner's statements, the Examiner argues on page 2 of the Office Action the "the bulbous end is designed to fit within the head of the screw" and that "[t]his sizing prevents the feature from moving through the slotted portion." The Examiner further states on page 3 of the Office Action that the end (91) "has something that can be considered at least a 'feature' which remains in the receiver member of the spinal anchor." The Examiner thus appears to be offering the argument that because the end (91) sits within the receiving member (54) of the spinal anchor (61), as illustrated in Figure 8A, the end (91) is prevented from passing through the slot in the cannula (42). However, the end's seating in the anchor (61) has no bearing on the fact that Spitzer does not disclose the claimed invention. While claim 14 does recite manipulating the spinal fixation element to cause the feature to sit within a receiving member of the spinal anchor, claim 14 *also* requires that the slot in the access device (not the receiving member) be adapted to prevent passage of the feature through any portion thereof. As discussed above, it is clear that Spitzer's end (91) is adapted to do exactly the opposite. The end (91) of the brace (90) *passes through* the opening (402) en route to its mating with the receiving member (54).

The Examiner also offers the argument on page 3 of the Office Action that Spitzer discloses the claimed slot because "[i]f the feature on the other end of a given rod were to be considered, the slot 402 can be configured (par 0048) to both allow movement of the bulbous end [91], or prevent movement." First, the end of the rod opposite the bulbous end (91) is irrelevant as to whether the cannula (42) has a slot that prevents the end (91) from passing through any portion thereof. Second, paragraph [0048] only supports the fact that Spitzer does not anticipate claim 14. Paragraph [0048] discusses adjusting the opening (402) on the second cannula (42) to be in a different downward location than the opening (402) on the first cannula (41) to allow the brace (90), as it arcs through the opening (402) in the first cannula (41), to be "precisely captured and retained" through the opening (402) in the second cannula (42). Paragraph [0048] in no way teaches or suggests eliminating the opening (402) which the brace (90) passes through, as such a modification would prevent use of the brace (90). Third, while paragraph [0048] discloses that the opening (401) used for lateral adjustment could be "eliminated, if desired," this is also irrelevant to the fact that the end (91) of the brace (90) purposely passes through the opening (402) in the cannula (42).

Accordingly, independent claim 14 distinguishes over Spitler and represents allowable subject matter. Claims 15-26 are allowable at least because they depend from an allowable base claim.

Claims 27-29

Independent claim 27 recites a method for implanting a spinal fixation element that includes providing at least two spinal anchors implanted in adjacent vertebrae of a patient's spine and providing an access device having an inner lumen extending between proximal and distal ends. The distal end is adapted to couple to one of the spinal anchors. The access device includes a slot formed in a sidewall thereof adjacent to the distal end. The method also includes providing a spinal fixation element having a first end and a second end with a feature formed thereon. The feature has a width that is greater than a maximum width of the slot to prevent passage thereof through the slot in the sidewall of the access device. The method also includes inserting the spinal fixation element through the lumen in the access device and manipulating the spinal fixation element to cause the feature to be positioned within the spinal anchor attached to the access device and the first end to extend through the slot, such that the spinal fixation element extends between the spinal anchors.

Spitler does not disclose an access device including a slot formed in a sidewall thereof adjacent to a distal end through which the first end extends and a feature having a *width that is greater than a maximum width of the slot* to prevent passage thereof through the slot. Again, the Examiner appears to be impermissibly ignoring claim language, this time "maximum width." The width of the brace end (91) is clearly not greater than a *maximum width* of the slot (403), which necessarily include the opening (402) in the cannula (42), because as discussed above, the end (91) purposely fits through the opening (402) in the cannula (42). The maximum width of the slot (403), measured across the opening (402), clearly will not prevent passage of the end (91) through the opening (402).

Accordingly, independent claim 27 distinguishes over Spitler and represents allowable subject matter. Claims 28-29 are allowable at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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